



STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
AMENDMENT # 5
RFP # 317.03-157.07

November 16, 2006

The subject RFP is hereby amended as follows.

A. The following RFP Schedule of Events updates or confirms scheduled RFP dates.

EVENT	TIME	DATE (all dates are state business days)	UPDATED/ CONFIRMED
1. State Issues RFP		October 17, 2006	CONFIRMED
2. Disability Accommodation Request Deadline		October 20, 2006	CONFIRMED
3. Pre-proposal Conference	1:00 p.m.	October 24, 2006	CONFIRMED
4. Notice of Intent to Propose Deadline		October 25, 2006	CONFIRMED
5. Written Comments Deadline Related to Initial Mandatory Qualifications and Software Demonstrations		October 25, 2006	CONFIRMED
6. State Responds to Written Comments Related to Initial Mandatory Qualifications and Software Demonstrations		October 30, 2006	CONFIRMED
7. Initial Mandatory Qualifications Deadline	2:00 p.m.	November 1, 2006	CONFIRMED
8. State Completes Evaluation of Initial Mandatory Qualifications and Issues Notices		November 8, 2006	CONFIRMED
9. Software Demonstrations		Nov. 28 – Dec. 6, 2006	CONFIRMED
10. Final Written Comments Deadline		December 8, 2006	CONFIRMED
11. State Completes Evaluation of Software Demonstration and Requirements and Issues Notices		December 15, 2006	CONFIRMED
12. State Responds to Final Written Comments		December 15, 2006	CONFIRMED

EVENT	TIME	DATE (<u>all</u> dates are state business days)	UPDATED/ CONFIRMED
13. Proposal Deadline	2:00 p.m.	December 28, 2006	CONFIRMED
14. State Completes Technical Proposal Evaluations		January 16, 2007	CONFIRMED
15. State Opens Cost Proposals and Calculates Scores	9:00 a.m.	January 17, 2007	CONFIRMED
16. State Issues Evaluation Notice <u>and</u> Opens RFP Files for Public Inspection	9:00 a.m.	January 19, 2007	CONFIRMED
17. Contract Signing		January 31, 2007	CONFIRMED
18. Contract Signature Deadline		February 7, 2007	CONFIRMED
19. Letter of Credit Deadline		February 8, 2007	CONFIRMED
20. Contract Start Date		February 13, 2007	CONFIRMED

Informational Notice 1

Proposers should pay careful attention to RFP Section 5.2.7 and its sub-sections that provide information for the Software Demonstrations. No additional meetings will be held with the State staff prior to the Software Demonstrations.

In accordance with RFP Sections 5.2.7.2 and 5.2.7.4, the Proposer must adhere to the demonstration script and agenda detailed in RFP.

5.2.7.2 **Demonstration Script.** The System Demonstration Script is included as RFP Attachment 6.14. This script specifies the requirements and processes that the State expects to be presented in each session. The vendor's evaluation score will be based on the demonstrated ability of the product to address the script's requirements.

5.2.7.4 **Agenda.** The agenda for the Software Demonstration is in RFP Attachment 6.14, System Demonstration Scripts. The demonstration must be executed in accordance with the agenda. The time frames specified should be followed as closely as possible. This is required in order to provide equal demonstration time and ensure a fair evaluation process across vendors.

Informational Notice 2

The Location for the Software Demonstrations is as follows:

Dickson Room
3rd Floor Training Center South
Wm R. Snodgrass Tennessee Tower
312 8th Avenue North
Nashville, Tennessee 37243

A. Delete RFP Section 1.1.1 in its entirety and replace it with the following:

1.1.1 Mandatory Proposer Requirements.

The State is seeking a vendor (the "Prime Vendor") that will be responsible for providing all requested services. The minimum vendor qualifications for responding to this RFP are:

- The proposed application is an existing commercial, off-the-shelf system (COTS) whose core applicant services software is owned by the Prime Vendor. Although there may be a requirement for some custom development to meet the State's unique requirements, the State is not looking for the vendor to develop a new system or to engage in a system development project.
- The proposed solution shall be hosted by the vendor. By specifying a "vendor hosted" solution, it is the intent of the State that all hardware (servers, storage devices, processors, etc.), software (operating systems, utility, applications, etc.) and data (configuration, user, etc.) is physically located at a site supplied by the Prime Vendor (either directly or through its subcontractors), and the operation and maintenance of the site is supplied by the Prime Vendor (either directly or through its subcontractors).
- The system has been deployed in a public sector organization with a minimum of 4,000 employees, and will be in production no later than December 31, 2006. A public sector organization is defined as a U.S. federal, city, county, or state government, a U.S. public higher education institution, or a U.S. quasi-governmental organization, such as a water district or river authority.
- The system has been deployed at a public sector organization that uses functionality similar to the State's requirements for civil service and merit hiring, and will be in production no later than December 31, 2006.
- The system has been successfully integrated with a commercial off-the-shelf Enterprise Resource Planning (ERP) software package and will be in production no later than December 31, 2006 .

The State shall verify the vendor's qualifications by evaluating the vendor's submission to the Initial Mandatory Qualifications (see RFP Section 5.2.2). Only vendors who meet the State's qualification criteria will be invited to conduct a software demonstration for the State's evaluators. Vendors who are deemed non-responsive to the State's Initial Mandatory Qualifications shall not proceed further in the evaluation and shall be notified individually by the State. These notices will not be posted to the RFP Web site. Additionally, following the software demonstrations, the State will compute a Preliminary Vendor Score (see RFP Section 5.2.8). Only those vendors that meet minimum criteria as defined in RFP Section 5.2.8 shall be invited to submit a Technical and Cost Proposal. Vendors who do not meet the criteria described in Section 5.2.8 shall not proceed further in the evaluation, and shall be notified individually by the State at that point. These notices will not be posted to the RFP Web site.

The Prime Vendor (also known as the Proposer or Contractor in this RFP) may team with multiple firms in its proposal but there can be only one Prime Vendor that will execute the contract expected to result from this RFP (see RFP Attachment 6.1, *Pro Forma* Contract) and will coordinate, integrate and be accountable for all services proposed. This excludes an arrangement between vendors of joint venturing or joint response to this proposal; such arrangements will not be allowed. The State will sign a contract for the total solution with the Prime Vendor only. The Prime Vendor shall be the firm that owns the software providing the core applicant services functionality. If the Prime Vendor does not directly offer hosting for their proposed solution, then the Prime Vendor shall subcontract those services as needed so that the Prime Vendor can offer those services to the State under its contract. The State will not contract with, nor make payments to, any vendors other than the Prime Vendor under this RFP. By the inclusion of other vendors (i.e., subcontractors) in the response, the Prime Vendor agrees to accept full responsibility for the performance of all other participating vendors under this contract, including their products, services and deliverables. As discussed later in this RFP, the Prime Vendor may only appear in one proposal submitted in response to this RFP. Subcontractors, whether providing software or services, may be included in more than one proposal. Multiple submissions from a firm that is Prime Vendor in a proposal or submission of alternative proposals will be grounds for disqualification of such proposals. Refer to Section 4.3.7 of this RFP.

B. Delete RFP Attachment 6.1 section C.3.a in its entirety and replace it with the following:

C.3.a. Payment Schedule

Pmt #	Description	Annual Amount	Est Pmt Period	Pmt %	Payment Amount
1	Partial Year 1 Payment, Paid at Completion of System Design Document (A.14.a.4)		Mar-07	22.50%	\$
2	Partial Year 1 Payment, Paid at Completion of Functionality Customized for State (Interfaces) (A.15.a.1)		Apr-07	11.00%	\$
3	Partial Year 1 Payment, Paid at Completion of Functionality Customized for State (Reports, Conversions, Enhancements, Workflows) (A.15.a.1)		Jun-07	11.50%	\$
4	Partial Year 1 Payment, Paid at Completion of Acceptance Testing (A.16.a.6)		Aug-07	22.50%	\$
5	Partial Year 1 Payment, Paid at Production System Live (A.17.a.7)		Dec-07	22.50%	\$
6	Partial Year 1 Payment, Paid at Accepted Production System (A.18.a.1)		Mar-08	10%	\$
7	Year 2 Payment: Annual Comprehensive Service Fee, to be paid in monthly installments in arrears		2008	8.33%	\$
8	Year 3 Payment, Annual Comprehensive Service Fee to be paid in monthly installments in arrears		2009	8.33%	\$
9	Year 4 Payment: Annual Comprehensive Service Fee, to be paid in monthly installments in arrears		2010	8.33%	\$
10	Year 5 Payment, Annual Comprehensive Service Fee to be paid in monthly installments in arrears		2011	8.33%	\$
Total Contract Payments					

C. Add the following item A.8 to RFP Attachment 6.3 Section A:

Page # (to be completed by Proposer)	Mandatory Requirement Items	State Use ONLY
		Pass/Fail
	<p>A.8 Provide a statement confirming that:</p> <ol style="list-style-type: none"> 1. The proposed solution is an existing commercial, off-the-shelf system (COTS) whose core applicant services software is owned by the Prime Vendor; and 2. The Proposer, either directly or through its subcontractors, is hosting the proposed solution as described in RFP Section 1.1.1, and is responsible, either directly or through its subcontractors, for all operation and maintenance of the vendor hosted solution during the contract term. 	

D. Delete RFP Attachment 6.6 in its entirety and replace it with the following:

RFP Attachment 6.6 – Contract Language Restrictions and Non-Negotiable Contractual Language

The State of Tennessee is committed to a fair and flexible procurement process that will allow potential proposers the opportunity to have input into the terms and conditions of the contract. Our goal is to arrive at a business arrangement that is in the best interests of the State and its contractors.

However, the State is bound by its Constitution and statutes to certain terms and conditions which would not necessarily apply to private business. Such restrictions upon the state include but are not limited to the items set forth below to inform in advance that associated issues are among those that may arise in contract negotiations.

1. Limitation of Liability This includes language relating to hold harmless, indemnification, and disclaimer of warranty clauses. We recognize that proposers have an interest in limiting liability that may arise under the contract. Historically, the State of Tennessee was not allowed to accept any limitations of liability or warranty since this was considered surrendering the rights of the citizens of the State. The Tennessee General Assembly granted some relief from this doctrine in 2000 with the passage of Tennessee Code Annotated section 12-4-119, which allows the State to accept certain limitations of liability.

However, this statute does not allow the State to limit the liability of a contractor below twice the value of the contract, or to limit liability for intentional torts, criminal acts, or fraudulent conduct. Any limitation or disclaimer that the State agrees to, including a limitation of liability for consequential damages, must fit within this statutory framework.

2. Confidentiality. We recognize that proposers consider it important to restrict distribution of proprietary information. The State of Tennessee, like most government entities, is subject to an open records statute. The Tennessee statute, T.C.A. 10-7-504, has been interpreted by the courts to require that all State records be open unless there is an express exemption in a statute, and the State cannot avoid this obligation by contract.

The General Assembly has granted an exemption that provides some protection to procurements of this type. Specifically, Section 10-7-504(a)(18) provides:

Computer programs, software, software manuals, and other types of information manufactured or marketed by persons or entities under legal right and sold, licensed, or donated to Tennessee state boards, agencies, or higher education institutions shall not be open to public inspection, provided that computer programs, software, software manuals, and other types of information produced by state or higher education employees at state expense shall be available for inspection as part of an audit or legislative review process.

However, this language may be inconsistent with confidentiality language in some proposers' form contracts.

3. Remedies. Many proposers ask their customers to agree to certain forms of relief for breaches of contract which the State cannot agree to. Tennessee Constitution Article I, Section 17, provides that the State can only surrender its sovereign immunity in circumstances permitted by the Tennessee General Assembly. In the case of State contracts, the State has consented to be sued in the Tennessee Claims Commission under T.C.A. 9-8-307 et seq. The Claims Commission can award money damages against the State and provides for appeal to the Tennessee court system. However, the State cannot agree to many forms of remedy which proposers often request, such as injunctive relief, binding arbitration or mediation, jurisdiction in any court outside Tennessee, or the payment of court costs and attorney fees.

4. Restrictions on Use of Work Product. Many information technology contractors request that the State place limitations on its use of products supplied or developed under the contract. Such arrangements are scrutinized carefully by State government regulators due to concerns that the State is placing unwarranted burdens on its right to use its own property. Another concern is that a set of complicated restrictions on use will be burdensome to enforce for a product that will be used for many purposes over many years by a large government organization. The language on use of work products in the State pro forma contract has been developed based on considerable experience in dealing with information technology contractors. We are open to suggestions on amendments to this language but any negotiations must take the State's concerns into account.

5. Records. The Records clause is specifically required by Departmental regulations. This is mandatory due to the strong public interest in monitoring government spending and preventing improper use of public funds.